

Complaint

Miss M has complained that Bank of Ireland (UK) Plc ("Bank of Ireland") irresponsibly provided her with an unaffordable loan.

Background

Bank of Ireland provided Miss M with a Post Office Money branded personal loan for £20,000.00 in June 2020. The loan had an APR of 18.9% and the total amount of £30,105.60, which included interest of £10,105.60, was due to be repaid in 60 monthly payments of just over £500.

One of our investigators looked into Miss M's complaint. She thought that reasonable and proportionate checks would have shown the loan to be unaffordable and so Bank of Ireland shouldn't have provided Miss M with this loan.

Bank of Ireland disagreed with our investigator's assessment and so the case was passed to an ombudsman.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

We've set out our approach to unaffordable/irresponsible lending complaints on our website and I've considered this while deciding Miss M's complaint.

Having carefully considered everything provided, I think that there are two overarching questions that I need to consider in order to decide what's fair and reasonable in all the circumstances of Miss M's complaint. These questions are:

- Did Bank of Ireland carry out reasonable and proportionate checks to satisfy itself that Miss M would be able to repay her loan in a sustainable way?
 - If so, did it make a fair lending decision?
 - If not, would such checks have shown that Miss M would have been able to do so?
- Did Bank of Ireland act unfairly or unreasonably towards Miss M in some other way?

I'll consider each of these questions in turn.

Did Bank of Ireland carry out reasonable and proportionate checks to satisfy itself that Miss M would be able to repay her loan in a sustainable way?

The rules and regulations in place when Bank of Ireland lent to Miss M required it to carry out a reasonable and proportionate assessment of whether she could afford to repay what

she would owe in a sustainable manner. This assessment is sometimes referred to as an “affordability assessment” or “affordability check”.

The checks had to be “borrower” focused – so Bank of Ireland had to think about whether sustainably repaying any amounts lent would cause difficulties or adverse consequences *for Miss M*. In practice this meant that Bank of Ireland had to ensure that making the repayments wouldn’t cause Miss M undue difficulty or adverse consequences. In other words, it wasn’t enough for Bank of Ireland to simply think about the likelihood of it getting its money back, it had to consider the impact of any repayments on Miss M.

Checks also had to be “proportionate” to the specific circumstances of the loan application. In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount / type / cost of credit they are seeking.

In light of this, I think that a reasonable and proportionate check ought generally to have been *more* thorough:

- the *lower* a customer’s income (reflecting that it could be more difficult to make any repayments to credit from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet higher repayments from a particular level of income);
- the *longer* the period of time a borrower will be indebted for (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make repayments for an extended period).

There may also be other factors which could influence how detailed a proportionate check should’ve been for a given application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances. I’ve kept all of this in mind when thinking about whether Bank of Ireland did what it needed to before providing Miss M with her loan.

Were Bank of Ireland’s checks reasonable and proportionate

Bank of Ireland’s says Miss M applied for her loan online. It says that the information Miss M would have seen requested that she check whether she could meet the repayments on the loan as it was her responsibility to make the payments. Bank of Ireland also says Miss M was asked about her income and a credit check was carried out on her. Based on the information it had available and the fact that Miss M’s application score was above its internal minimum threshold, it was satisfied its checks were proportionate.

I’ve carefully thought about what Bank of Ireland has said.

I want to start by saying that I’m not aware of anything in the rules and regulations, or the industry codes of practice, which state, or even infer, that lesser standards or a lesser duty of care applies to affordability assessments conducted for online applications. So for the avoidance of doubt, I want to be clear in saying that as the regulated firm here it was Bank of Ireland’s responsibility to assess whether Miss M’s loan was affordable, notwithstanding the fact this application was made online. I’m simply not persuaded by the argument that Miss M’s decision to proceed with the application despite the information she was provided with means Bank of Ireland met its obligations and responsibilities here.

I've also considered what Bank of Ireland said it did before providing this loan and while it has provided the details of the internal score Miss M achieved it hasn't provided any of the data which it says it obtained from the credit reference agency and which underpinned its decision to lend. It appears as though it simply expects me to accept that the loan was affordable simply because its systems approved it. And I think that it's important for me to point that it doesn't automatically follow that a lender will have acted fairly and reasonably when providing a loan simply because it acted in line with its policy or an application met its minimum score.

Considering Bank of Ireland says it gathered sufficient information to inform its lending decision, it's extremely disappointing that Bank of Ireland hasn't provided it to me. This service cannot and will not look for evidence and construct an argument to support Bank of Ireland's defence of Miss M's complaint. If Bank of Ireland can't provide the information it relied on and describe why this information showed it was fair and reasonable to lend to Miss M, then I can't and won't reach the conclusion that its checks before providing this loan were proportionate. Without any evidence from Bank of Ireland to support its conclusions on this matter, I cannot and will not take it as read that its lending decision was fair.

I'm concerned at the reliance that Bank of Ireland has placed on the income check it says it carried out. It's fair to say that Bank of Ireland was advancing a significant sum of money here. And even on Miss M's declaration of her income, the payments were going to take up almost 20% of her monthly income. Given the relatively significant proportion of Miss M's income being taken up by the payments, even on Bank of Ireland's figures, I would have expected Bank of Ireland to have taken care to ensure Miss M's declaration of income was accurate before proceeding to lend.

Bank of Ireland has said it used a credit reference agency to validate Miss M's income and it hasn't been entirely clear or forthcoming on what this entailed. I am assuming that the data it used either compared the income Miss M declared on this application to what she'd declared on others made to her bank and other lenders, or it compared Miss M's declaration of her income to the amount going into her bank account each month. Either way, as far as I can see, at best, Bank of Ireland merely cross-referenced what Miss M declared and I don't consider that this is the same as verifying her income.

Equally, I'm also concerned that while Bank of Ireland says the information it obtained on Miss M's credit history showed no adverse information and it hasn't evidenced this, the evidence Miss M has provided shows that she had a number of credit accounts with debt collections agencies. Given Bank of Ireland hasn't provided the output of its credit checks despite having been given ample opportunity to do so, I'm prepared to accept what Miss M has provided as being indicative of what any reasonable credit check is likely to have shown.

Miss M's previous difficulties repaying credit, the amount being advanced and the proportion of Miss M's declared income being taken up by the monthly repayments, leave me satisfied that it is reasonable and proportionate to have expected Bank of Ireland to have obtained further information before determining that this loan was affordable for Miss M. As there's no evidence that Bank of Ireland asked for, or considered, further information to properly scrutinise and the matters I've highlighted, I find that it didn't complete fair, reasonable and proportionate affordability checks before providing Miss M with her loan.

Would reasonable and proportionate checks have indicated to Bank of Ireland that Miss M would have been unable to repay this loan?

As reasonable and proportionate checks weren't carried out before this loan was provided, I can't say for sure what they would've shown. So I need to decide whether it is more likely

than not that a proportionate check would have told Bank of Ireland that Miss M would've been unable to sustainably repay this loan.

As I've explained, Miss M has provided us with evidence of her financial circumstances at the time she applied for this loan. Of course, I accept different checks might show different things. And just because something shows up in the information Miss M has provided, it doesn't mean it would've shown up in any checks Bank of Ireland might've carried out. But in the absence of anything else from Bank of Ireland showing what this information would have shown, I think it's perfectly fair, reasonable and proportionate to place considerable weight on it as an indication of what Miss M's financial circumstances were more likely than not to have been at the time.

I've seen the comments Bank of Ireland has made regarding our investigator's consideration of Miss M's bank statements and that the regulator's rules do not specify that these need to be reviewed before an application is approved. So I want to be clear in stating that I've not looked at Miss M's bank statements because I think that Bank of Ireland ought to have obtained them before lending to her. I've consulted Miss M's bank statements because they were readily available at this stage and they contain the information I now need to reconstruct the proportionate check Bank of Ireland should have but failed to carry out.

I've carefully considered the information provided. Having done so, it's clear that Miss M was earning substantially less than Bank of Ireland believed her to be. And her actual income was pretty much being used to meet her existing commitments and even then the fact that some of her accounts ended up with debt collection agencies shows that she was failing to meet some of them. Furthermore, Miss M's bank statements also show that she was significantly overdrawn too.

Bearing all of this in mind, I'm satisfied that reasonable and proportionate checks would more likely than not have demonstrated that Miss M was already reliant on credit and in a difficult financial position. I think this, in itself, demonstrates that Miss M was unlikely to have been able to make the repayments to this loan without borrowing further and/or suffering undue difficulty. And, in these circumstances, I find that reasonable and proportionate checks would more likely than not have alerted Bank of Ireland to the fact that Miss M would not be able to sustainably make the repayments to this loan.

Did Bank of Ireland act unfairly or unreasonably towards Miss M in some other way?

I've carefully thought about everything provided. Having done so, I've not seen anything to suggest that Bank of Ireland acted unfairly or unreasonably towards Miss M in some other way.

Did Miss M lose out as a result of Bank of Ireland's shortcomings?

Miss M has paid and is being expected to pay additional interest and charges as a result of being unfairly provided with this loan. Miss M had to pay this additional interest at a time when she was already finding it difficult to repay what she owed. So I'm satisfied that Miss M has lost out because of what Bank of Ireland did wrong and Bank of Ireland needs to put things right.

Fair compensation – what Bank of Ireland needs to do to put things right for Miss M

I've given a lot of careful thought to what fair compensation should look like in this case. And I think that Bank of Ireland needs to do the following to put things right for Miss M.

- Removing all interest, fees and charges applied to Miss M's loan from the outset. The payments Miss M made should be deducted from the new starting balance – the £20,000.00 originally lent. Bank of Ireland should treat any payments made should the new starting balance be cleared as overpayments. And any overpayments, if there are any, should be refunded to Miss M;
- Adding interest at 8% per year simple on any overpayments, if any, from the date they were made by Miss M to the date of settlement†;
- If an outstanding balance remains on Miss M's loan once these adjustments have been made, Bank of Ireland should contact Miss M to arrange a suitable repayment plan for this.
- If, after all adjustments have been made, no outstanding balance remains, Bank of Ireland should remove any and all adverse information it may have recorded about this loan from Miss M's credit file.

†HM Revenue & Customs requires Bank of Ireland to take off tax from this interest. Bank of Ireland must give Miss M a certificate showing how much tax it's taken off if she asks for one.

My final decision

For the reasons explained, I'm upholding Miss M's complaint. Bank of Ireland (UK) Plc should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 19 July 2022.

Jeshen Narayanan
Ombudsman